

AMENDED IN SENATE MAY 15, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1819

Introduced by Assembly Member Hall
(Coauthors: Assembly Members Garcia and Ting)

February 18, 2014

An act to amend Section 1596.795 of the Health and Safety Code, and to amend Section 6404.5 of the Labor Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1819, as amended, Hall. Family day care home: smoking prohibition.

Existing law, the California Child Day Care Facilities Act, governs the licensing and operation of family day care homes and requires the State Department of Social Services to administer these provisions. Among other things, the act prohibits the smoking of tobacco in a private residence that is licensed as a family day care home during the hours of operation as a family day care home. A person who willfully or repeatedly violates a provision of the act is guilty of a misdemeanor.

This bill would prohibit the smoking of tobacco in a private residence that is licensed as a family day care home without regard to whether the act occurs during the hours of operation of the home. By expanding the scope of a crime, the bill would impose a state-mandated local program. *The bill would also make a conforming change.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1596.795 of the Health and Safety Code
2 is amended to read:

3 1596.795. (a) The smoking of tobacco in a private residence
4 that is licensed as a family day care home shall be prohibited in
5 the home and in those areas of the family day care home where
6 children are present. Nothing in this section shall prohibit a city
7 or county from enacting or enforcing an ordinance relating to
8 smoking in a family day care home if the ordinance is more
9 stringent than this section.

10 (b) The smoking of tobacco on the premises of a licensed day
11 care center shall be prohibited.

12 SEC. 2. Section 6404.5 of the Labor Code is amended to read:

13 6404.5. (a) The Legislature finds and declares that regulation
14 of smoking in the workplace is a matter of statewide interest and
15 concern. It is the intent of the Legislature in enacting this section
16 to prohibit the smoking of tobacco products in all (100 percent of)
17 enclosed places of employment in this state, as covered by this
18 section, thereby eliminating the need of local governments to enact
19 workplace smoking restrictions within their respective jurisdictions.
20 It is further the intent of the Legislature to create a uniform
21 statewide standard to restrict and prohibit the smoking of tobacco
22 products in enclosed places of employment, as specified in this
23 section, in order to reduce employee exposure to environmental
24 tobacco smoke to a level that will prevent anything other than
25 insignificantly harmful effects to exposed employees, and also to
26 eliminate the confusion and hardship that can result from enactment
27 or enforcement of disparate local workplace smoking restrictions.
28 Notwithstanding any other provision of this section, it is the intent
29 of the Legislature that any area not defined as a “place of
30 employment” pursuant to subdivision (d) or in which the smoking
31 of tobacco products is not regulated pursuant to subdivision (e)
32 shall be subject to local regulation of smoking of tobacco products.

1 (b) No employer shall knowingly or intentionally permit, and
2 no person shall engage in, the smoking of tobacco products in an
3 enclosed space at a place of employment. "Enclosed space"
4 includes lobbies, lounges, waiting areas, elevators, stairwells, and
5 restrooms that are a structural part of the building and not
6 specifically defined in subdivision (d).

7 (c) For purposes of this section, an employer who permits any
8 nonemployee access to his or her place of employment on a regular
9 basis has not acted knowingly or intentionally in violation of this
10 section if he or she has taken the following reasonable steps to
11 prevent smoking by a nonemployee:

12 (1) Posted clear and prominent signs, as follows:

13 (A) Where smoking is prohibited throughout the building or
14 structure, a sign stating "No smoking" shall be posted at each
15 entrance to the building or structure.

16 (B) Where smoking is permitted in designated areas of the
17 building or structure, a sign stating "Smoking is prohibited except
18 in designated areas" shall be posted at each entrance to the building
19 or structure.

20 (2) Has requested, when appropriate, that a nonemployee who
21 is smoking refrain from smoking in the enclosed workplace.

22 For purposes of this subdivision, "reasonable steps" does not
23 include (A) the physical ejection of a nonemployee from the place
24 of employment or (B) any requirement for making a request to a
25 nonemployee to refrain from smoking, under circumstances
26 involving a risk of physical harm to the employer or any employee.

27 (d) For purposes of this section, "place of employment" does
28 not include any of the following:

29 (1) Sixty-five percent of the guestroom accommodations in a
30 hotel, motel, or similar transient lodging establishment.

31 (2) Areas of the lobby in a hotel, motel, or other similar transient
32 lodging establishment designated for smoking by the establishment.
33 An establishment may permit smoking in a designated lobby area
34 that does not exceed 25 percent of the total floor area of the lobby
35 or, if the total area of the lobby is 2,000 square feet or less, that
36 does not exceed 50 percent of the total floor area of the lobby. For
37 purposes of this paragraph, "lobby" means the common public
38 area of an establishment in which registration and other similar or
39 related transactions, or both, are conducted and in which the

1 establishment's guests and members of the public typically
2 congregate.

3 (3) Meeting and banquet rooms in a hotel, motel, other transient
4 lodging establishment similar to a hotel or motel, restaurant, or
5 public convention center, except while food or beverage functions
6 are taking place, including setup, service, and cleanup activities,
7 or when the room is being used for exhibit purposes. At times
8 when smoking is not permitted in a meeting or banquet room
9 pursuant to this paragraph, the establishment may permit smoking
10 in corridors and prefunction areas adjacent to and serving the
11 meeting or banquet room if no employee is stationed in that
12 corridor or area on other than a passing basis.

13 (4) Retail or wholesale tobacco shops and private smokers'
14 lounges. For purposes of this paragraph:

15 (A) "Private smokers' lounge" means any enclosed area in or
16 attached to a retail or wholesale tobacco shop that is dedicated to
17 the use of tobacco products, including, but not limited to, cigars
18 and pipes.

19 (B) "Retail or wholesale tobacco shop" means any business
20 establishment the main purpose of which is the sale of tobacco
21 products, including, but not limited to, cigars, pipe tobacco, and
22 smoking accessories.

23 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle
24 Code, or truck tractors, as defined in Section 655 of the Vehicle
25 Code, if no nonsmoking employees are present.

26 (6) Warehouse facilities. For purposes of this paragraph,
27 "warehouse facility" means a warehouse facility with more than
28 100,000 square feet of total floorspace, and 20 or fewer full-time
29 employees working at the facility, but does not include any area
30 within a facility that is utilized as office space.

31 (7) Gaming clubs, in which smoking is permitted by subdivision
32 (f). For purposes of this paragraph, "gaming club" means any
33 gaming club, as defined in Section 19802 of the Business and
34 Professions Code, or bingo facility, as defined in Section 326.5 of
35 the Penal Code, that restricts access to minors under 18 years of
36 age.

37 (8) Bars and taverns, in which smoking is permitted by
38 subdivision (f). For purposes of this paragraph, "bar" or "tavern"
39 means a facility primarily devoted to the serving of alcoholic
40 beverages for consumption by guests on the premises, in which

1 the serving of food is incidental. "Bar or tavern" includes those
2 facilities located within a hotel, motel, or other similar transient
3 occupancy establishment. However, when located within a building
4 in conjunction with another use, including a restaurant, "bar" or
5 "tavern" includes only those areas used primarily for the sale and
6 service of alcoholic beverages. "Bar" or "tavern" does not include
7 the dining areas of a restaurant, regardless of whether alcoholic
8 beverages are served therein.

9 (9) Theatrical production sites, if smoking is an integral part of
10 the story in the theatrical production.

11 (10) Medical research or treatment sites, if smoking is integral
12 to the research and treatment being conducted.

13 (11) Private residences, except for private residences licensed
14 as family day care homes, ~~during the hours of operation as family~~
15 ~~day care homes and in those areas where children are present.~~
16 *where smoking is prohibited pursuant to Section 1596.795 of the*
17 *Health and Safety Code.*

18 (12) Patient smoking areas in long-term health care facilities,
19 as defined in Section 1418 of the Health and Safety Code.

20 (13) Breakrooms designated by employers for smoking, provided
21 that all of the following conditions are met:

22 (A) Air from the smoking room shall be exhausted directly to
23 the outside by an exhaust fan. Air from the smoking room shall
24 not be recirculated to other parts of the building.

25 (B) The employer shall comply with any ventilation standard
26 or other standard utilizing appropriate technology, including, but
27 not limited to, mechanical, electronic, and biotechnical systems,
28 adopted by the Occupational Safety and Health Standards Board
29 or the federal Environmental Protection Agency. If both adopt
30 inconsistent standards, the ventilation standards of the Occupational
31 Safety and Health Standards Board shall be no less stringent than
32 the standards adopted by the federal Environmental Protection
33 Agency.

34 (C) The smoking room shall be located in a nonwork area where
35 no one, as part of his or her work responsibilities, is required to
36 enter. For purposes of this subparagraph, "work responsibilities"
37 does not include any custodial or maintenance work carried out in
38 the breakroom when it is unoccupied.

39 (D) There are sufficient nonsmoking breakrooms to
40 accommodate nonsmokers.

1 (14) Employers with a total of five or fewer employees, either
2 full time or part time, may permit smoking where all of the
3 following conditions are met:

4 (A) The smoking area is not accessible to minors.

5 (B) All employees who enter the smoking area consent to permit
6 smoking. No one, as part of his or her work responsibilities, shall
7 be required to work in an area where smoking is permitted. An
8 employer who is determined by the division to have used coercion
9 to obtain consent or who has required an employee to work in the
10 smoking area shall be subject to the penalty provisions of Section
11 6427.

12 (C) Air from the smoking area shall be exhausted directly to
13 the outside by an exhaust fan. Air from the smoking area shall not
14 be recirculated to other parts of the building.

15 (D) The employer shall comply with any ventilation standard
16 or other standard utilizing appropriate technology, including, but
17 not limited to, mechanical, electronic, and biotechnical systems,
18 adopted by the Occupational Safety and Health Standards Board
19 or the federal Environmental Protection Agency. If both adopt
20 inconsistent standards, the ventilation standards of the Occupational
21 Safety and Health Standards Board shall be no less stringent than
22 the standards adopted by the federal Environmental Protection
23 Agency.

24 This paragraph shall not be construed to (i) supersede or render
25 inapplicable any condition or limitation on smoking areas made
26 applicable to specific types of business establishments by any other
27 paragraph of this subdivision or (ii) apply in lieu of any otherwise
28 applicable paragraph of this subdivision that has become
29 inoperative.

30 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
31 construed to require employers to provide reasonable
32 accommodation to smokers, or to provide breakrooms for smokers
33 or nonsmokers.

34 (f) (1) Except as otherwise provided in this subdivision,
35 smoking may be permitted in gaming clubs, as defined in paragraph
36 (7) of subdivision (d), and in bars and taverns, as defined in
37 paragraph (8) of subdivision (d), until the earlier of the following:

38 (A) January 1, 1998.

39 (B) The date of adoption of a regulation (i) by the Occupational
40 Safety and Health Standards Board reducing the permissible

1 employee exposure level to environmental tobacco smoke to a
2 level that will prevent anything other than insignificantly harmful
3 effects to exposed employees or (ii) by the federal Environmental
4 Protection Agency establishing a standard for reduction of
5 permissible exposure to environmental tobacco smoke to an
6 exposure level that will prevent anything other than insignificantly
7 harmful effects to exposed persons.

8 (2) If a regulation specified in subparagraph (B) of paragraph
9 (1) is adopted on or before January 1, 1998, smoking may thereafter
10 be permitted in gaming clubs and in bars and taverns, subject to
11 full compliance with, or conformity to, the standard in the
12 regulation within two years following the date of adoption of the
13 regulation. An employer failing to achieve compliance with, or
14 conformity to, the regulation within this two-year period shall
15 prohibit smoking in the gaming club, bar, or tavern until
16 compliance or conformity is achieved. If the Occupational Safety
17 and Health Standards Board and the federal Environmental
18 Protection Agency both adopt regulations specified in subparagraph
19 (B) of paragraph (1) that are inconsistent, the regulations of the
20 Occupational Safety and Health Standards Board shall be no less
21 stringent than the regulations of the federal Environmental
22 Protection Agency.

23 (3) If a regulation specified in subparagraph (B) of paragraph
24 (1) is not adopted on or before January 1, 1998, the exemptions
25 specified in paragraphs (7) and (8) of subdivision (d) shall become
26 inoperative on and after January 1, 1998, until a regulation is
27 adopted. Upon adoption of such a regulation on or after January
28 1, 1998, smoking may thereafter be permitted in gaming clubs and
29 in bars and taverns, subject to full compliance with, or conformity
30 to, the standard in the regulation within two years following the
31 date of adoption of the regulation. An employer failing to achieve
32 compliance with, or conformity to, the regulation within this
33 two-year period shall prohibit smoking in the gaming club, bar,
34 or tavern until compliance or conformity is achieved. If the
35 Occupational Safety and Health Standards Board and the federal
36 Environmental Protection Agency both adopt regulations specified
37 in subparagraph (B) of paragraph (1) that are inconsistent, the
38 regulations of the Occupational Safety and Health Standards Board
39 shall be no less stringent than the regulations of the federal
40 Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100-percent) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100-percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100-percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a “place of employment” or in which smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

1 (j) Any violation of the prohibition set forth in subdivision (b)
2 is an infraction, punishable by a fine not to exceed one hundred
3 dollars (\$100) for a first violation, two hundred dollars (\$200) for
4 a second violation within one year, and five hundred dollars (\$500)
5 for a third and for each subsequent violation within one year. This
6 subdivision shall be enforced by local law enforcement agencies,
7 including, but not limited to, local health departments, as
8 determined by the local governing body.

9 (k) Notwithstanding Section 6309, the division shall not be
10 required to respond to any complaint regarding the smoking of
11 tobacco products in an enclosed space at a place of employment,
12 unless the employer has been found guilty pursuant to subdivision
13 (j) of a third violation of subdivision (b) within the previous year.

14 (l) If any provision of this act or the application thereof to any
15 person or circumstances is held invalid, that invalidity shall not
16 affect other provisions or applications of the act that can be given
17 effect without the invalid provision or application, and to this end
18 the provisions of this act are severable.

19 ~~SEC. 2.~~

20 *SEC. 3.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.